

**IT: Where pursuant to infrastructure and facility management agreement entered between assessee and third party, assessee had given its trademark 'Vibes' for a period of five years and received consideration, since agreement was valid for a period of five years and assessee had to carry on certain activities throughout period of five years by taking participation into management of business affairs of Vibes clinic among other responsibilities, assessee was justified in deferring income over a period of five years, i.e., tenure of agreement**

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**[2018] 94 taxmann.com 11 (Kolkata - Trib.)  
IN THE ITAT KOLKATA BENCH 'C'  
Alankar Slimming & Cosmetic Clinic (P.) Ltd.**

**v.**

**Income-tax Officer, Ward- 7(1), Kolkata\***

**A.T. VARKEY, JUDICIAL MEMBER  
AND M. BALAGANESH, ACCOUNTANT MEMBER  
IT APPEAL NO. 1374 (KOL.) OF 2016  
[ASSESSMENT YEAR 2007-08]  
MAY 15, 2018**

**Section 5 of the Income-tax Act, 1961, read with Accounting Standard 9 - Income - Accrual of (Trademark) - Assessment year 2007-08 - Whether where pursuant to infrastructure and facility management agreement entered between assessee and third party, assessee had given its trademark 'Vibes' for a period of five years and received consideration, since agreement was valid for a period of five years and assessee had to carry on certain activities throughout period of five years by taking participation into management of business affairs of Vibes clinic among other responsibilities, assessee was justified in deferring income over a period of five years, i.e., tenure of agreement - Held, yes [Para 4] [In favour of assessee]**

#### **CASE REVIEW**

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*Asstt. CIT v. Mahindra Holidays & Resorts India Ltd. [\[2010\] 39 SOT 438 \(Chennai\) \(SB\)](#) (para 4) followed.*

#### **CASES REFERRED TO**

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*Asstt. CIT v. Mahindra Holidays & Resorts India Ltd. [\[2010\] 39 SOT 438 \(Chennai\) \(SB\)](#) (para 4).*

*Subhash Agarwal, Adv. for the Appellant. Saurabh Kumar, CIT (DR) for the Respondent.*

#### **ORDER**

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**M. Balaganesh, Accountant Member** - This appeal by the assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-15, Kolkata [in short the Id CIT (A)] in Appeal No.325/CIT (A)-15/14-15/7(1)/Kol dated 21.03.2016 against the order passed by the I.T.O., Ward-7(1),

Kolkata [ in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short "the Act") dated 29.12.2009 for the Assessment Year 2007-08.

2. The only issue to be decided in this appeal is as to whether the Id CIT A was justified in confirming the addition of Rs.20,08,334/- on account of income not offered to tax, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a private limited company running a beauty parlour. The return of income for A.Y.2007-08 was filed by the assessee on 31.10.2007 declaring total income of Rs. 'Nil'. The assessee received a sum of Rs. 22,00,000/- from two parties who entered into joint venture - one for centre at Bangalore and another centre at Girish Park, Kolkata. The assessee is the owner of registered trade mark "Vibes". The assessee had given on franchise basis this trademark to be used at the centre at Bangalore and at another Centre at Girish park, Kolkata. Pursuant to the infrastructure and facility management agreement entered thereon, in lieu of which, the assessee received consideration of Rs.22,00,000/-. The said agreement is valid for a period of five years. The agreement also provided that both the parties including the assessee shall take the premises on lease for a minimum period of five years in the name of both the parties for establishing a clinic and for this purpose both parties will enter into a lease deed with the owner of the premises i.e. landlord. Pursuant to this both assessee as well as the franchise partner shall be jointly the lessees of the premises. The agreement also provided that the development of the premises including the interior of the clinic in the leased premises for the establishment of "Vibes" clinic shall be the sole responsibility of the franchise partner. The franchise partner had to install equipments as per the specifications provided by the assessee. The designs of most of the branded equipments belonged to the assessee and the franchise partner as per the agreement, had to purchase the equipments together with designs which are the proprietary configuration of the assessee. The agreement further provided that no part of these equipments would be modified, copied or tampered by the franchise partner unilaterally. The agreements also provided that in case of violation any part of this agreement, which necessitates termination of this agreement, the assessee can withdraw its equipments procured and installed by the franchise partner in the leased premises, by giving a notice period of one week. The agreement further provided that the management of the 'Vibes' clinic shall vest with the assessee and the assessee shall have sole discretion and complete control over all the promotional activities and had to take administrative management of the business affairs and running of the clinic and the franchise partner shall not interfere with the funding of the clinic in any manner whatsoever. The agreement specifically provided that mobilization and technology knowhow fee received by the assessee (i.e. consideration of Rs.22 lakhs) shall not be refundable by the assessee to the franchise partner for any reason whatsoever. Clause - IX of the agreement specifically provides the responsibility of both the parties as under :

"Responsibility of Party of First Part

- (a) Administration and overall management of the Clinic as specified in clause-6.
- (b) Promotion and Marketing of the Activities of the Clinic locally and centrally as specified in Clause - 7.
- (c) Appointment, transfer, posting, promotion, demotion and retrenchment of the Staff working in and for the Clinic.
- (d) Customer relationship activities.
- (e) Financial accounting and auditing of the Clinic.
- (f) Assist the Party of the Second Part and the Clinic in procurement of equipment as specified in Clause- 2.

- (g) To purchase standard quality consumables, linen & accessories to maintain quality and uniformity of all VIBES Clinics.

Responsibilities of Party of Second Part

- (a) To cooperate and coordinate the Party of the First Part in smooth administration and overall management of the Clinic.
- (b) To procure and install the equipment as specified by the party of the first part in the Premises.
- (c) To take the Premises on lease for a minimum period of 5 years or to give the self owned premises on lease for establishment of the Clinic for the Party of the First Part in accordance with Clause-3.
- (d) To pay rent of the premises as specified in the Lease Deed to the Landlord till the date of the inauguration of the Clinic.
- (e) To have in the Premises telephone connections, electrical fittings such as tube lights, fans exhaust fans, geysers, heaters and the requisite connected power load in accordance with requirements provided by the first party.
- (f) To have requisite permission/sanction from the Municipal Corporation and other connected statutory bodies to conduct carry out Activities of the Clinic.
- (g) To develop the Premises in accordance with Clause 4 above.
- (h) To abide by the provisions of clause 5 and to contribute for different types of reserves as provided in the said clause 5.
- (i) To alter, replenish electric installations and fittings or any other utility item referred to in the preceding para, at its own cost to suit the requirements of the Clinic before the inauguration of the Clinic.
- (j) To pay all the Municipal Taxes, levies, charges, penalties for use or misuse if detected later on at any stage. for the Premises any legal or other expenses required to be incurred thereon for restoration of legal status of the Premises for running the Clinic.
- (k) To accept the customers of another VIBES Clinic free of any additional charge in case of closure /shifting of that VIBES Clinic.
- (l) To abide by the confidentially, non-transferability and non-competition provisions/covenants specified in clause 11 below."

The assessee though received a sum of Rs.22,00,000/- apportioned a sum of Rs.1,91,666/- as income for the year under consideration and treated the remaining portion of Rs.20,08,334/- as a good will shown in the liability side of the balance sheet. The break-up of the income recognition done by the assessee is as under :

JV for Centre at Bangalore	:	Rs.1,58,333/-
JM for Girish Park at Kolkata	:	Rs. 33,333/-
		Rs.1,91,666/-

The amount shown in the liability side of the balance sheet was Rs.20,08,334/- (22,00,000 - 191666/-). The assessee placed reliance on the revenue recognition Accounting Standard-9 by ICAI in support of its revenue recognition of Rs.1,91,666/- is its income in the year under consideration. The Id. AO also placed reliance on AS-9 and observed that the assessee had shifted the entire risk to the other person and the consideration received by the assessee is not refundable to the other person under any circumstances. Hence the entire business risk is only on the other person and not on the assessee. Accordingly he observed that there is no reason for the assessee to defer the recognition of income over a period of the

agreement i.e. 5 years. Based on these observations, the AO brought to tax differential amount of Rs.20,08,334/- shown as liability by the assessee in its books as income accrued and received by the assessee for the year under consideration. This action of the Id. AO was upheld by the Id. CIT (A).

Aggrieved the assessee is in appeal on the following revised grounds :—

- "1. For that on the facts and in the circumstances of the case, Ld. CIT (A) was not justified in confirming the addition of Rs. 20,08,334/- made by the A.O. on account of income allegedly not offered to tax
2. Without prejudice to the above ground. Id. CIT (A), having confirmed the addition of Rs.20,08,334/- in the year, ought to have directed the AO to reduce the said income offered to tax in the subsequent years.
3. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal. "

4. We have heard the rival submissions. The facts stated herein above remain undisputed and hence are not reiterated for the sake of brevity. It is not in dispute that the subject mentioned receipt of Rs.22,00,000/- is a revenue receipt. The only dispute is that whether the entire Rs.22,00,000/- accrued as income to the assessee during the year itself or it is to be spread over a period of five years. We have perused the copy of the subject mentioned agreements in lieu of which the assessee received consideration of Rs.22,00,000/-. These agreements are enclosed from pages 15 to 46 of the paper book. From the perusal of the various clauses of the agreement we find that this agreement is valid for a period of five years and the assessee has to carry on certain activities through out the period of five years by taking participation into management of business affairs of the vibes clinic among other responsibilities as enumerated (supra). Hence in our considered opinion, the assessee is justified in deferring the income of Rs.22,00,000/-over a period of five years i.e. tenor of the agreement. We also take assistance from the Special Bench decision of Chennai Bench in the case of *Asstt. CIT v. Mahindra Holidays and Resorts India Ltd.* [\[2010\] 39 SOT 438](#) to 2002-03 dated 26.05.2010 wherein it was held that the amount of timeshare receivable by the assessee upfront at the time of enrolment of a member is not the income chargeable to tax in the initial year on account of contractual obligation that is fastened to the receipt to provide services in future over a term of contract. We hold that the principle of deferment of revenue recognition has been upheld by the Special Bench of Chennai Tribunal (supra). We also find from the AS-9 of revenue recognition issued by ICAI in para-8 as under :—

"8. The Use by Others of Enterprise Resources Yielding Interest, Royalties and Dividends

8.1 The use by others of such enterprise resources gives rise to :

- (i) interest - charges for the use of cash resources or amounts due to the enterprise ;
- (ii) royalties - charges for the use of such assets as know-how, patents, trade mark and copyrights;
- (iii) dividends - rewards from the holding of investments in shares.

8.2 Interest accrues, in most circumstances, on the time basis determined by the amount outstanding and the rate applicable. Usually, discount or premium on debt securities held is treated as though it were accruing over the period to maturity.

8.3 Royalties accrue in accordance with the terms of the relevant agreement and are usually recognized on that basis unless, having regard to the substance of the transactions, it is more appropriate to recognize revenue on some other systematic and rational basis.

8.4 Dividends from investments in shares are not recognized in the statement of profit and loss until a right to receive payment is established.

8.5 When interest, royalties and dividends from foreign countries require exchange permission and uncertainty in remittance is anticipated, revenue recognition may need to be postponed."

**4.1** We find that the relevant clause relied upon by the Id. AO from AS-9 on revenue recognition pertains to the sale of goods where the risk and reward incidental to the ownership of the product has been transferred by the seller to the buyer. But in the instant case, the assessee has not made any sale of goods instead it only received a consideration in the form of royalty for enabling the usage of its trade mark " Vibes". Hence as per the revenue recognition prescribed under AS-9 of ICAI in respect of royalties supra, the same has to be recognized only over the validity of tenure of the agreement which has been rightly done by the assessee. Hence we have no hesitation to direct the Id. AO to delete the addition in the sum of Rs.20,08,334/-. The grounds raised by the assessee are allowed.

**5.** In the result the appeal of the assessee is allowed.

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\*In favour of assessee.